

In the Matter of the Accusation )  
Against: )

No. D-3682

Physician's and Surgeon's  
Certificate No. A-002001,

Respondent.

The Division of Medical Quality non-adopted the Proposed Decision in this case and proceeded to decide the case itself upon the record, including the transcript. The parties were afforded the opportunity to present both written and oral argument before the Division itself.

Except for the changes and additions set forth below, the Division hereby adopts the attached Proposed Decision of the Administrative Law Judge as its decision in this case.

"Further facts and circumstances are that respondent had an office manager and bookkeeper in his employ who were stealing from him. He had turned the business side of his practice over to the two employees and believed they could be trusted. Respondent discovered the employee thefts and made police complaints which led to criminal charges against the employees. It was not established by the evidence that the fired employees made charges which resulted in a criminal filing against respondent because he made a criminal complaint against them."

1

2. On August 27, 1987, Kenneth J. Wagstaff, complainant, made and filed an accusation against respondent in complainant's official capacity as Executive Director of the Board. In the accusation, respondent is charged with a 1986 conviction of violating the Welfare and Institutions Code.

3. On May 29, 1986, in the Superior Court of California, County of Los Angeles, in case no. A372409, respondent pled nolo contendere to one count of violating Welfare and Institutions Code section 14107 (Fraudulent Medi-Cal Claim), a misdemeanor. Proceedings were thereafter suspended and respondent was placed on summary probation for one (1) year on conditions consisting of a \$1,000 fine. No other conditions are evident. Respondent paid the fine assessed and on or about May 28, 1987, his probation expired by its term.

4. The parties stipulated and based upon the stipulation it is found that on December 8, 1982, respondent presented a claim to Computer Sciences Corporation and the State of California for allowance and payment of a false and fraudulent Medi-Cal claim, no. 23422709074, for Medi-Cal recipient A.S.

5. Further facts and circumstances of respondent offense are that in 1982 respondent had an office manager and bookkeeper in his employ who were stealing from him. He had turned the business side of his practice over to the two employees and believed they could be trusted. On July 3, 1982, respondent discovered the employee thefts and made police complaints which lead to criminal charges against the employees. However, in retaliation the employees made charges that respondent was submitting false and fraudulent Medi-Cal claims. Those charges led to an investigation of respondent, his arrest in January 1984, and his nolo contendere plea in May 1986.

6. Subsequent to the criminal charges against respondent, he was required to pay \$90,500 to the State of California, plus an additional \$14,000 to the State for investigative costs. Respondent was also the subject of federal charges against him arising out of the same facts and was required to pay \$140,000 to the U.S. government.

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7. Respondent did not know or understand that his nolo contendere plea would lead to disciplinary action by the Medical Board.<sup>1</sup> After completing his one year probationary term in May 1987, he continued in practice believing the case was ended.

8. On August 27, 1987, respondent was served with the accusation in this case. On March 11, 1988, respondent moved the Superior Court, County of Los Angeles, to vacate the judgment of conviction against him in case no. A372409. Respondent's understanding at the time of entering his nolo contendere plea was that the board would not take disciplinary action against his license. Upon notice of the board's accusation, he considered the matter and decided to withdraw his nolo plea and go to trial.

9. On March 11, 1988, the Superior Court granted respondent's motion to vacate the judgment of conviction against him and the original charges were reinstated. At that time, respondent had made all restitution payments and fines asked of him and had completed probation.

10. On August 9, 1989, the Court of Appeal reversed the Superior Court and ordered denial of respondent's motion to withdraw his plea and reinstate the judgment. Respondent believes he could have established his personal lack of guilt if a trial had been permitted. Nevertheless, the evidence does not indicate or establish that his nolo contendere plea was made pursuant to People v. West (1970) 3 Cal.3d 595, or that such a plea was proposed or considered.

#### DETERMINATION OF ISSUES

A. Respondent is guilty of unprofessional conduct under Business and Professions Code section 2236 in that he has been convicted of an offense substantially related to the qualifications, functions, and duties of a physician and surgeon by reason of finding nos. 3, 4, 5 and 6.

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<sup>1</sup>Hearsay evidence indicates that during pendency of the criminal case (No. A372409) in Superior Court, oral representations were made to respondent that the Medical Board would not take disciplinary action if respondent pled no contest. Respondent testifies he entered his plea relying upon the representations, and moved to vacate the judgment after the complainant filed disciplinary charges.

B. Cause exists pursuant to Business and Professions Code section 2234 to suspend or revoke respondent's certificate for unprofessional conduct. However, in view of facts of extenuation, mitigation and rehabilitation as found in finding nos. 5, 6, 7, and 8, it would not be against the public interest to place respondent on probation on terms and conditions. The conviction is over three year old, and the act(s) forming the basis of the conviction occurred in 1982 (8 years ago), is even older.

#### ORDER

Certificate no. A 02001 issued to respondent Philip J. Green, M.D. is revoked. However, revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

1. Within sixty (60) days from the effective date of this decision, respondent shall submit to the Board for its prior approval a course in Ethics which respondent shall successfully complete during the first year of probation.

2. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

3. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

4. Respondent shall comply with the Board's probation surveillance program.


5. Respondent shall appear in person for interviews with the Board's medical consultant upon request at various intervals and with reasonable notice.

6. The period of probation shall not run during the time respondent is residing or practicing outside the jurisdiction of California. If during probation respondent moves out of the jurisdiction of California to reside or practice elsewhere, respondent is required immediately to notify the Board in writing of the date of departure, and the date of return.

7. Upon successful completion of probation respondent's certificate will be fully restored.

8. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

DATED: JANUARY 25, 1991

  
RICHARD E. RANGER  
Administrative Law Judge

RER:btm

MEDICAL BOARD OF CALIFORNIA  
STATE OF CALIFORNIA

In the Matter of the Accusation )	
Against: )	
)	
)	
PHILIP J. GREEN, M.D. )	Agency No. D-3682
5363 Balboa Blvd., Ste. 433 )	OAH No. L-41922
Encino, CA 91316, )	
)	
(Physician and Surgeon )	
Certificate No. A 02001), )	
)	
)	
)	
Respondent )	
_____ )	

PROPOSED DECISION

On January 18, 1991, this case came on for hearing before Richard E. Ranger, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles.

William L. Marcus, Deputy Attorney General, represented complainant.

Harland W. Braun, Attorney at Law, represented respondent who appeared in person.

Evidence was received, the issues were argued, and the case was submitted for decision.

FINDINGS OF FACT

1. Respondent Philip J. Green, M.D. has been licensed by the board for 29 years. On November 27, 1961, the California Board of Medical Quality Assurance (now Medical Board of California) issued physician and surgeon certificate No. A 02001 to respondent authorizing the practice of medicine in this state. He is a 1960 graduate of the University of British Columbia Medical School, interned at University of California in 1960-61, and served an ear, nose and throat residency at UCLA from 1961 to 1965. Respondent is 55 years old, has maintained an ENT private practice in Encino, California, and from 1980 to 1990 was chief of staff at Valley Hospital in Van Nuys. The evidence does not establish board certification.

conditions requiring community services and billings monitoring, as follows:

"Certificate No. A-002001 issued to respondent Philip J. Green, M.D. is revoked. However, revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions."

Add Condition No. 9 to read:

"9. Within 30 days of the effective date of this decision, respondent shall submit to the Division for its prior approval a plan of practice in which respondent's billing practice shall be monitored by another physician in respondent's field of practice, who shall provide periodic reports to the Division.

"If the monitor resigns or is no longer available, respondent shall, within 15 days, move to have a new monitor appointed, through nomination by respondent and approval by the Division."

Add Condition No. 10 to read:

"10. Within 60 days of the effective date of this decision, respondent shall submit to the Division for its prior approval a community service program in which respondent shall provide free medical services on a regular basis to a community or charitable facility or agency for at least 20 hours a month for the duration of probation, excluding one month each year for vacation time."

All other probationary conditions in the Proposed Decision remain in effect.

The effective date of this decision shall be October 20, 1991.

So ordered September 20, 1991.

MEDICAL BOARD OF CALIFORNIA  
DIVISION OF MEDICAL QUALITY

By s/ THERESA CLAASSEN  
Secretary/Treasurer

1 JOHN K. VAN DE KAMP, Attorney General  
2 of the State of California  
3 WILLIAM L. MARCUS, Deputy Attorney General  
4 3580 Wilshire Boulevard, Suite 500  
5 Los Angeles CA 90010  
6 Telephone: (213) 736-2074

7 Attorneys for Complainant

8 BEFORE THE  
9 DIVISION OF MEDICAL QUALITY  
10 BOARD OF MEDICAL QUALITY ASSURANCE  
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation )  
13 Against: )

CASE NO. D-3682

14 PHILIP J. GREEN, M.D. )  
15 5363 Balboa Blvd., Suite 433 )  
16 Encino CA 91316 )

STIPULATION IN  
SETTLEMENT OF  
ACCUSATION

17 Physician and Surgeon )  
18 Certificate No. A-02001, )

19 Respondent. )  
20 )

21 IT IS HEREBY STIPULATED, by and between Complainant,  
22 who is represented by John K. Van De Kamp, Attorney General, by  
23 and through William L. Marcus, deputy attorney general, and  
24 Respondent, who is represented by Harland W. Braun, Esq., as  
25 follows:

26 1. There is currently on file before the Division of  
27 Medical Quality of the Board of Medical Quality Assurance  
(hereinafter referred to as "the Division") an Accusation, No. D-  
3682, against Philip J. Green, M.D. (hereinafter referred to as  
"the respondent").

2. Respondent acknowledges that he has been properly  
served with said accusation and has read it and reviewed it with

1 his attorney-of-record, Harland W. Braun, Esq..

2 3. Respondent has discussed the instant stipulation  
3 with counsel, including all admissions, stipulations and recitals  
4 contained in the stipulation.

5 4. Respondent understands that but for this  
6 stipulation he would be entitled to a hearing on the charges in  
7 the accusation in Case No. D-3682, including the right to  
8 confront and cross-examine witnesses against him, to testify on  
9 his own behalf and present witnesses on his behalf, to a written  
10 decision following hearing, to appeal any adverse decision to the  
11 Superior Court and to all other rights under the Administrative  
12 Procedures Act and the Code of Civil Procedure.

13 5. Respondent freely, voluntarily, knowingly and  
14 intelligently waives each of the rights set out hereinabove at  
15 paragraph 4.

16 6. Respondent stipulates that the following facts are  
17 true:

18 A. The facts alleged in paragraphs 1 and 2 of the  
19 accusation in Case No. D-3682 are true and correct.

20 B. On or about May 29, 1986, in Case No. A 372409,  
21 People v. Green, Los Angeles Superior Court,  
22 respondent pled nolo contendere to and was thereafter  
23 convicted of one count of violating Welfare and  
24 Institutions Code section 14107, for, on December 8,  
25 1982, willfully, unlawfully, and with the intent  
26 to defraud, presenting a claim to Computer Sciences  
27 Corporation and the State of California for

1 allowance and payment of a false and fraudulent  
2 Medi-Cal claim.

3 7. Pursuant to the admissions in Paragraph 6A,  
4 respondent is subject to disciplinary action pursuant to Business  
5 and Professions Code section 2234 (a), taken in conjunction with  
6 Business and Professions Code section 2236.

7 8. Pursuant to the foregoing stipulations, admissions  
8 and recitals, the following discipline shall be imposed on  
9 respondent:

10 Physician and Surgeon Certificate No. A 02001,  
11 heretofore issued to Philip J. Green, M.D., is revoked;  
12 provided, however, said revocation shall be stayed and  
13 Certificate No. A 02001 placed on probation for a  
14 period of three (3) years on the following terms and  
15 conditions:

16 A. Respondent shall obey all federal, state and local  
17 laws, and all rules governing the practice of medicine  
18 in California.

19 B. Within 60 days of the effective date of this  
20 decision, respondent shall submit to the Division for  
21 its prior approval a course in Ethics, which respondent  
22 shall successfully complete during the first year of  
23 probation.

24 C. Within 60 days of the effective date of this  
25 decision, respondent shall submit to the Division  
26 for its prior approval a community service program  
27 in which respondent shall provide free medical services

1 on a regular basis to a community or charitable  
2 facility or agency for at least 16 hours a month for  
3 the first twenty four months of probation.

4 D. Respondent shall not perform or order any  
5 diagnostic procedures or treatment without a proper  
6 medical indication and an adequate prior physical  
7 examination and history; such diagnostic procedures  
8 and treatment include, but are not limited to,  
9 routine or repeated injections.

10 E. Respondent shall submit quarterly declarations  
11 under penalty of perjury on forms provided by the Division,  
12 stating whether there has been compliance with all the  
13 conditions of probation.

14 F. Respondent shall comply with the Division's  
15 probation surveillance program.

16 G. Respondent shall appear in person for interviews  
17 with the Division's medical consultant upon request at  
18 various intervals and with reasonable notice.

19 H. The period of probation shall not run during the  
20 time respondent is residing or practicing outside the  
21 jurisdiction of California. If, during probation,  
22 respondent moves out of the jurisdiction of California to  
23 reside or practice elsewhere, respondent is required to  
24 immediately notify the Division in writing of the date of  
25 departure, and the date of return, if any.

26 I. Upon successful completion of probation,  
27 respondent's certificate will be fully restored.

1 J. If respondent violates probation in any respect,  
2 the Division, after giving respondent notice and the  
3 opportunity to be heard, may revoke probation and carry out  
4 the disciplinary order that was stayed. If an accusation  
5 or petition to revoke probation is filed against respondent  
6 during probation, the Division shall have continuing  
7 jurisdiction until the matter is final, and the period of  
8 probation shall be extended until the matter is final.

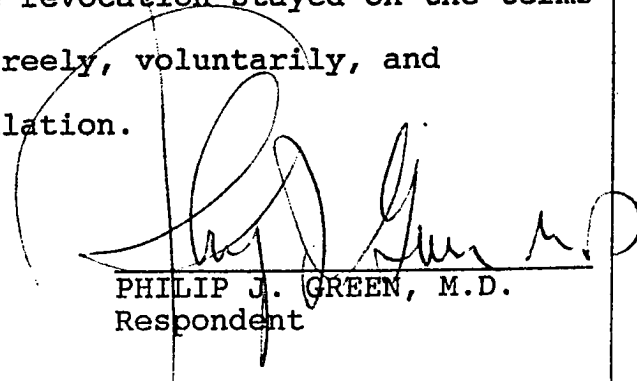
9 9. All stipulations, admissions and recitals contained  
10 herein are made solely for the purpose of settling Case No. D-  
11 3682 and may not be used in any other proceeding, excepting a  
12 license denial or disciplinary proceeding maintained by a state  
13 medical board or similar federal or foreign agency.

14 10. Should the Division, for any reason, fail or  
15 refuse to adopt this stipulation, it shall be of no force or  
16 effect as to any party.

17 ACKNOWLEDGMENT

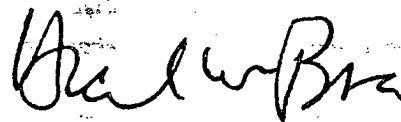
18 I, Philip J. Green, M.D., have fully read the above  
19 Stipulation in Settlement of Accusation and have discussed it  
20 with my attorney, Harland W. Braun. I understand the terms of  
21 the stipulation, including that my Certificate to practice  
22 medicine will be revoked, with the revocation stayed on the terms  
23 and conditions set out above. I freely, voluntarily, and  
24 intelligently enter into the stipulation.

25  
26 DATED: July 29, 1989

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PHILIP J. GREEN, M.D.  
Respondent

1  
2  
3 DATED:

June 25, 1985



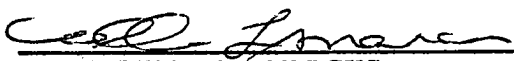
HARLAND W. BRAUN, ESQ.  
Attorney for Respondent

JOHN K. VAN DE KAMP  
Attorney General

4  
5  
6  
7  
8  
9 DATED:

November 12, 1989

By:



WILLIAM L. MARCUS  
Deputy Attorney General

Attorneys for Complainant

1 JOHN K. VAN DE KAMP, Attorney General  
of the State of California  
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4 Telephone: (213) 736-2074  
5 Attorneys for Complainant

6  
7  
8 BEFORE THE  
DIVISION OF MEDICAL QUALITY  
9 BOARD OF MEDICAL QUALITY ASSURANCE  
STATE OF CALIFORNIA  
10

11 In the Matter of the Accusation )  
Against: )

CASE No. D-3682

12 PHILIP J. GREEN, M.D. )  
13 5363 Balboa Blvd., Suite 433 )  
Encino, California 91316, )  
14 Physician and Surgeon )  
15 Certificate No. A 02001, )

ACCUSATION

16 Respondent )  
17

18 Complainant alleges that:

19 1. He is Kenneth J. Wagstaff, Executive Director  
20 of the Board of Medical Quality Assurance (hereinafter "the  
21 Board") and makes and files this accusation solely in his  
22 official capacity.

23 2. On or about November 27, 1961, Philip J. D. Green,  
24 M.D. (hereinafter "respondent") was issued physician and  
25 surgeon certificate No. A 02001 by the Board. Said certificate  
26 is currently in good standing.

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1.

1                   3. Business and Professions Code section 2227<sup>\*/</sup>  
2 provides the Division of Medical Quality (hereinafter "the  
3 Division") a division of the Board, may take disciplinary  
4 action against a licensee. Section 2234 provides the Division  
5 shall take action against a licensee guilty of unprofessional  
6 conduct. Unprofessional conduct is defined to include violating  
7 or attempting to violate, directly or indirectly, or assisting in  
8 or abetting the violation of, or conspiring to violate, any  
9 provision of the Medical Practice Act (section 2234(a)) or the  
10 commission of any act involving dishonesty or corruption which  
11 is substantially related to the qualifications, functions, or  
12 duties of a physician and surgeon (section 2234(e)).

13                   4. Section 2236 provides that conviction of any offense  
14 substantially related to the qualifications, functions or duties  
15 of a physician and surgeon constitutes unprofessional conduct.

16                   5. Section 2261 provides that knowingly making or  
17 signing any certificate or other document directly or indirectly  
18 •related to the practice of medicine which falsely represents  
19 the existence or nonexistence of a state of facts constitutes  
20 unprofessional conduct.

21                   6. Section 2262 provides that altering or modifying  
22 the medical record of any person, with fraudulent intent, or  
23 creating any false medical record, with fraudulent intent,  
24 consitutes unprofessional conduct.

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25                   \*All statutory references are to the Business and  
26 Professions Code, except where otherwise noted.

1           7. Respondent is subject to disciplinary action  
2 pursuant to section 2234(a), taken in conjunction with  
3 section 2236 as follows:

4           A. On or about May 29, 1986, respondent in Case  
5 No. A 372409, People v. Green, Los Angeles Superior Court,  
6 respondent pled nolo contendere to one count of violating  
7 Welfare and Institutions Code section 14107. On or about  
8 July 24, 1986, respondent was sentenced, the offense  
9 being declared a misdemeanor, to one year of probation,  
10 including a \$1,000 fine.

11           B. The facts and circumstances are that on or about  
12 December 8, 1982, respondent willfully, unlawfully, and  
13 with the intention to defraud, presented a claim to  
14 Computer Sciences Corporation and the State of California  
15 for allowance and payment of a false and fraudulent Medi-  
16 Cal claim number 23422709074 for Medi-Cal recipient A.S.

17           8. Respondent is subject to disciplinary action  
18 pursuant to sections 2234 and 2234(a), in conjunction with  
19 sections 2261 and 2262, and 2234(e), as follows:

20           A. On or about the following dates respondent  
21 presented the listed claims to Computer Sciences  
22 Corporation and the State of California for allowance and  
23 payment of Medi-Cal claims for furnishing services:

	<u>Date</u>	<u>Claim No.</u>	<u>Patient</u>
24			
25	1. 12-8-82	23422709074	A.S.
26	2. 12-8-82	23422811117	A.S.

27           /

	<u>Date</u>	<u>Claim No.</u>	<u>Patient</u>
1			
2	3. 12-8-82	23423427052	A.S.
3	4. 12-8-82	23423427054	A.S.
4	5. 2-24-83	30553452027	A.S.
5	6. 2-24-83	30553452029	A.S.
6	7. 11-15-82	23193522060	B.B.
7	8. 11-12-82	231628010081	B.B.
8	9. 1-24-83	30243111059	B.B.
9	10. 1-24-83	30243412173	B.B.
10	11. 1-24-83	30243412174	B.B.
11	12. 6-6-83	31573549030	M.F.
12	13. 6-13-83	31643543182	M.F.
13	14. 7-11-83	31923624143	M.F.
14	15. 3-21-83	30803433028	R.G.
15	16. 3-21-83	30803433029	R.G.
16	17. 3-21-83	30802720237	R.G.
17	18. 3-21-83	30802720238	R.G.
18	19. 3-21-83	30802720239	R.G.
19	20. 3-21-83	30803025098	R.G.
20	21. 4-18-83	31083601132	R.G.
21	22. 4-18-83	31083601133	R.G.
22	23. 10-25-82	22982749153	C.S.
23	24. 10-25-82	22982749154	C.S.
24	25. 9-20-82	22633014263	V.K.
25	26. 9-20-82	22633014264	V.K.
26	27. 9-20-82	22633014265	V.K.
27	28. 9-20-82	22633014266	V.K.

	<u>Date</u>	<u>Claim No.</u>	<u>Patient</u>
1			
2	29. 10-25-82	22982749159	M.J.
3	30. 10-25-82	22982749161	M.J.
4	31. 11-8-82	23122645210	M.J.
5	32. 11-8-82	23122645211	M.J.
6	33. 11-8-82	23123516006	M.J.
7	34. 11-8-82	23122621121	M.J.
8	35. 10-25-82	22982749145	J.O.
9	36. 10-25-82	22982749146	J.O.
10	37. 10-25-82	22982749147	J.O.
11	38. 10-25-82	22982749152	J.O.
12	39. 12-20-82	23543006073	J.O.
13	40. 4-18-83	31083601128	W.W.
14	41. 4-18-83	31083043068	W.W.
15	42. 4-18-83	31083043069	W.W.
16	43. 4-18-83	31083043070	W.W.
17	44. 4-18-83	31083043071	W.W.

18 B. Each of the above claims was false and fraudulent  
19 and respondent presented and caused them to be presented  
20 knowingly, willfully, unlawfully and with the intent to  
21 defraud the state of California.

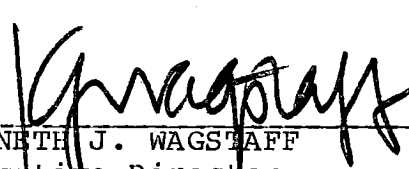
22 WHEREFORE, complainant prays a hearing be held on the  
23 matters alleged hereinabove and, following said hearing, the  
24 Division issue a decision:

25 1. Revoking or suspending physician and surgeon  
26 Certificate No. A 02001; and

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1                   2. Taking such other and further action as the Division  
2 may deem proper.

3                   Dated: August 27, 1987

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8                     
9                   KENNETH J. WAGSTAFF  
10                  Executive Director  
11                  Board of Medical Quality Assurance  
12                  State of California

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17                  Complainant  
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23                  A-87  
24                  PJG1-6  
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